

TASMANIA
LAW REFORM
INSTITUTE

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Mr Mark Huber
Project Manager
OPCAT Implementation Project

By email: enquiries@npm.tas.gov.au

Dear Mark,

Re: EOI – Tasmanian NPM Implementation

The Tasmania Law Reform Institute (TLRI) appreciates the opportunity to respond to the Tasmanian NPM Implementation Project's *Consultation Paper 1, Approach to Article 4: Identifying Places of Detention* (consultation paper).

The TLRI makes the following submissions in response to the third focus question of the consultation paper, namely 'What is important for the NPM to consider in order for its functions to be responsive to the populations that your organisation represents? (needs, risks, barriers)'.

1. External Advisors/Experts

The TLRI recognises the vulnerability of those who find themselves in situations of detention of any type, and the additional dimensions of vulnerability that arise for certain groups, such as (but not limited to) children, people experiencing mental illness, and persons who have potentially been subjected to torture or ill-treatment as defined by OPCAT. For this reason, the Institute recommends that the NPM permit the involvement of persons with specialised knowledge and/or experience to inform and assist the interview process (as provided for in s 15 of the *OPCAT Implementation Act* (Tas)). This will ensure that the NPM's role as

inspector and/or interviewer is able to be effective and, crucially, is not distressing or retraumatising for the interviewee.

This recommendation is consistent with Article 18(2) of OPCAT as well as guidelines from the UN Human Rights Office of the High Commissioner, which state:

The members of NPMs shall collectively have the expertise and experience necessary for the effective functioning of such mechanisms. [...] Relevant expertise includes legal, medical, psychological, child-related and gender expertise, and any other related expertise so as to allow NPMs to carry out their activities in accordance with the Optional Protocol, in an informed and inter-disciplinary fashion. [...] In order to cover any shortages in human resources or gaps in expertise, NPMs should be able to engage external expertise, consider setting up internship programmes, or partner with universities and civil society or similar institutions such as social care homes.¹

The involvement of persons with specialised knowledge and/or experience could be (a) through a formal advisory group, or (b) as 'experts by experience', as elaborated upon in Australia OPCAT Network's submission to the Subcommittee on Prevention, 'Implementation of OPCAT in Australia'.²

1.1 Formal Advisory Group

A formal and permanent Advisory Group with a range of specialised knowledge and experience could be established to inform the inspection and interview processes. This type of approach was recommended by the Victorian Ombudsman in 2019:

The Advisory Group should be composed of oversight bodies and civil society members with expertise in mental health, disability, human rights, culturally and linguistically diverse communities and the wellbeing and interests of First Nations peoples, and children and young people. Members of the Advisory Group could be further involved in the NPM's work through participation on inspections, developing inspection tools and materials, choosing themes and locations, and other preventative work, as determined by the NPM.³

1.2 Experts by Experience

Alternatively, so-called 'experts by experience' could be engaged on an ad hoc basis to inform the approach to specific situations, with the option of the expert accompanying the NPM to

¹ https://www.ohchr.org/sites/default/files/Documents/Publications/NPM_Guide_EN.pdf, p 17.

²

https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Implementation_of_OPCAT_in_Australia.pdf.

³ Victorian Ombudsman, OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people (September 2019), 17 24-25).

interviews, or even conducting the interview. As noted by the UK NPM body, Care Quality Commission: ‘We have found many people find it easier to talk to an Expert by Experience rather than an inspector. This is just one of the benefits of including an Expert by Experience in our visiting and inspection programme.’⁴ The New Zealand Ombudsman also advocates for this approach, as noted in Australia OPCAT Network's submission, mentioned above, at page 31.

Other have suggested that external experts will benefit NPM processes by, among other things, incorporating ‘additional perspectives [of] civil society ... to inspections’.⁵

2. Remote Inspections

The TLRI also recommends exploring the option of remote inspections, for example by requesting CCTV or bodycam footage (which the TLRI submits is consistent with s 16 of the *OPCAT Implementation Act*), or conducting interviews by secure online connection (consistent with s 13 of the *OPCAT Implementation Act*). These options, employed as supplementary methods of inspection rather than as the main method, could increase the capacity of the NPM to inspect a greater number of places of detention around Tasmania without notice, while minimising resource and time constraints. In certain circumstances remote inspections or interviews may be less intrusive for particularly vulnerable groups. Finally, it is feasible that remote methods could incorporate experts by experience.

Kind regards



Prof Jeremy Prichard
Director

⁴ Care Quality Commission, *Monitoring the Mental Health Act in 2016/17*, Appendix A: Involving People (2018), 46.

⁵ Richard Harding, *Australia’s circuitous path towards the ratification of OPCAT, 2002–2017: the challenges of implementation* (2019), 25(1) *Australian Journal of Human Rights*, 14.